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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 09/982,852
Filing Date: October 22, 2001
Appellant(s): EAST ET AL.

JUN 11 2007

GROUP 3600

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For Appellant

EXAMINER'S ANSWER

Art Unit: 3621

This is in response to the appeal brief filed January 29, 2007 appealing from the Office action mailed May 4, 2006.

(1) Real party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,671,412

Christiano

9-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 and 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christiano (US 5,671,412).

Regarding claim 1 -

Christiano discloses a method for providing access to application software in the event of inaccessibility of a license management system (e.g. col 3 ln 67 – col 4 ln4), comprising the steps of determining whether a user has a valid software license to run a software application including sending a query to the license management system (e.g. col 4 ln 44-46); and permitting a recognized user to execute said software application in the event of inaccessibility of the license management system (e.g. col 17 ln 15-20, col 3 ln 67-col 4 ln 4).

Christiano does not specify exactly the same wording as in the instant claims; however, it would be obvious to one of ordinary skill in the art to adapt the teachings of Christiano in order to obtain the instant claims, thereby maximizing efficiency and accessibility in the use of mission-critical software. In other words, Christiano contemplates license inaccessibility due specifically to failure of the license management system. It would be obvious to one of ordinary skill in the art at the time the invention was made to expand license inaccessibility in such a way as to include not only actual failure of the license management system but also failures in communication wherein the user cannot access the said license management system due to, e.g., failures of the internet service provider or any other reason.

Art Unit: 3621

Regarding claim 2 –

Christiano discloses the method according to claim 1, wherein said permitting step comprises: recognizing said user as a previously valid user, before permitting said recognized user to execute said software application (e.g. col 17 ln 20-22). As above, Christiano does not specify exactly the same wording as in the instant claims, however, it would be obvious to one of ordinary skill in the art to adapt the teachings of Christiano in order to obtain the instant claims, thereby obtaining greater efficiency for the use of mission-critical software. In other words, Christiano contemplates license inaccessibility due specifically to failure of the license management system. It would be obvious to one of ordinary skill in the art at the time the invention was made to expand license inaccessibility in such a way as to include not only actual failure of the license management system but also failures in communication wherein the user cannot access the said license management system due to, e.g., failures of the internet service provider or any other reason.

Regarding claim 3 -

Christiano discloses the method according to claim 2, wherein said recognizing step comprises: determining if access to said software application by said user has previously been validly authorized via said license management system (e.g. col 19 ln 11-15). Note that it stands to reason, if the user has not been previously validly authorized, there will be no license record.

Art Unit: 3621

Regarding claim 4 -

Christiano discloses the method according to claim 2, further comprising: executing said software application in a punishment mode comprising: imposing a punishment (e.g. col 22, ln 5-20). Although Christiano does not use the term "punishment" the cited lines refer to ways in which the software behaves differently while operating under the failsafe mode. Even if not termed "punishment" by Christiano, having a "failsafe" or "overdraft" message flashing constantly on the screen is arguably annoying enough to be considered a punishment or penalty. Nothing in claim 4 is more specific as to the punishment.

Regarding claim 7 -

Christiano discloses the method according to claim 4, wherein said punishment comprises: increasing said punishment upon occurrence of a first criterion (e.g. col 22 ln 5-20). Although Christiano does not specify increasing a punishment it does discuss different ways to indicate failsafe and/or overdraft status. It would be obvious to one of ordinary skill in the art to include an increase in such ways to indicate failsafe or overdraft status as one more different way of indicating said status.

Regarding claim 8 -

Christiano discloses the method according to claim 4, wherein said punishment comprises: decreasing said punishment upon occurrence of a second criterion (e.g. col 22 ln 5-20). Failsafe and overdraft are different criteria, and, as above, under claim 7, a decrease in such ways to indicate failsafe or overdraft status would be one more different way of indicating said status.

Regarding claim 9 –

Christiano discloses the method according to claim 1, further comprising: storing recognition of previously authorized access on a local workstation used by said recognized user (e.g. col 21 ln 59-61).

Regarding claim 10 -

Christiano discloses the method according to claim 9, wherein said recognition is stored as an encrypted code key in a register of said local workstation (e.g. col 11 ln 42-57 Table 1).

Regarding claim 11 -

Christiano discloses the method according to claim 4, wherein said punishment mode comprises: increasing said punishment if said recognized user subsequently attempts to execute said application in failsafe mode in the event of inaccessibility of the license management system (e.g. col 22 ln 5-20). Although Christiano does not specify increasing a punishment it does discuss different ways to indicate failsafe and/or overdraft status. It would be obvious to one of ordinary skill in the art to include an increase in such ways to indicate failsafe or overdraft status as one more different way of indicating said status.

Regarding claim 12 -

Christiano discloses the method according to claim 4, wherein said punishment mode comprises: decreasing punishment if said recognized user subsequently attempts to execute said application including validated authorization by the license management system (e.g. col 22 ln 5-20). Failsafe and overdraft are different criteria, and, as above,

under claim 7, a decrease in such ways to indicate failsafe or overdraft status would be one more different way of indicating said status.

Regarding claim 13-

Christiano discloses the method according to claim 4, wherein said punishment comprises: imposing at least one of a time delay, a time limit, a software impediment, and a disablement of functionality of said software application program (e.g. col 22 ln 5-20). As above, Christiano does not use the term punishment, however, he does describe messages being displayed when software is in use under failsafe status, which can be considered a software impediment or punishment.

Regarding claim 14 -

Christiano discloses the method according to claim 1, wherein said license management system is a license server (e.g. fig. 1).

Regarding claim 15-

Christiano discloses the method according to claim 1, wherein said permitting step comprises determining whether any previously valid authorizations have been established with said license management system by checking a value set when said software application is initially validly installed (e.g. col 21 ln51-57).

Regarding claim 16 -

Christiano discloses a system for managing access to concurrent software licenses, comprising: a network (e.g. col 3 ln 18) a license management system coupled to said network operative to authorize a user of a software application (e.g. col 3 ln 20-25) and a client workstation coupled to said network, wherein said client workstation comprises

Art Unit: 3621

a validation device operative to permit a recognized user to execute said software application in the event of inaccessibility of a license management system (e.g. col 3 In 67 – col 4 In 4).

As above, Christiano does not specify exactly the same wording as in the instant claims, however, it would be obvious to one of ordinary skill in the art to adapt the teachings of Christiano in order to obtain the instant claims, thereby maximizing efficiency and accessibility in the use of mission-critical software. In other words, Christiano contemplates license inaccessibility due specifically to failure of the license management system. It would be obvious to one of ordinary skill in the art at the time the invention was made to expand license inaccessibility in such a way as to include not only actual failure of the license management system but also failures in communication wherein the user cannot access the said license management system due to, e.g., failures of the internet service provider or any other reason.

Regarding claim 17 -

Christiano discloses the system according to claim 16, wherein said validation device is operative to recognize whether said user previously obtained a valid authorization to execute said software application by said license management system before permitting execution of said software application (e.g. col 17 In 20-22). As above, Christiano does not specify exactly the same wording as in the instant claims, however, it would be obvious to one of ordinary skill in the art to adapt the teachings of Christiano in order to obtain the instant claims, thereby obtaining greater efficiency for the use of mission-critical software. In other words, Christiano contemplates license inaccessibility due

Art Unit: 3621

specifically to failure of the license management system. It would be obvious to one of ordinary skill in the art at the time the invention was made to expand license inaccessibility in such a way as to include not only actual failure of the license management system but also failures in communication wherein the user cannot access the said license management system due to, e.g., failures of the internet service provider or any other reason.

Regarding claim 18 -

Christiano discloses the system according to claim 16, wherein said validation device permits said user to run said software application with a punishment (e.g. col 22, ln 5-20). Although Christiano does not use the term "punishment" the cited lines refer to ways in which the software behaves differently while operating under the failsafe mode. Even if not termed "punishment" by Christiano, having a "failsafe" or "overdraft" message flashing constantly on the screen is arguably annoying enough to be considered a punishment or penalty. Nothing in claim 4 goes to greater specifics as to the punishment.

Regarding claim 19 -

Christiano discloses the system according to claim 18, wherein said validation device permits said user to execute said software application with said punishment if a previously valid authorization of said user is recognized (e.g. col 22, ln 5-20). Although Christiano does not use the term "punishment" the cited lines refer to ways in which the software behaves differently while operating under the failsafe mode. Even if not termed "punishment" by Christiano, having a "failsafe" or "overdraft" message flashing

Art Unit: 3621

constantly on the screen is arguably annoying enough to be considered a punishment or penalty. Nothing in claim 4 goes to greater specifics as to the punishment.

Regarding claim 20 -

Christiano discloses the system according to claim 19, wherein said license management system is a license server (e.g. fig. 1).

Regarding claim 21 -

Christiano discloses the system according to claim 19, wherein said punishment comprises at least one of a time delay, a time limit, a software impediment, and a disablement of functionality of said software (e.g. col 22 ln 5-20). As above, Christiano does not use the term punishment, however, he does describe messages being displayed when software is in use under failsafe status, which can be considered a software impediment.

Regarding claim 22 -

Christiano discloses the system according to claim 21, wherein said punishment increases if said user previously attempted access with said inaccessible license management system (e.g. col 22 ln 5-20). Although Christiano does not specify increasing a punishment it does discuss different ways to indicate failsafe and/or overdraft status. It would be obvious to one of ordinary skill in the art to include an increase in such ways to indicate failsafe or overdraft status as one more different ways of indicating said status.

Regarding claim 23 -

Art Unit: 3621

Christiano discloses the system according to claim 22, wherein said punishment decreases if said user subsequently is validly authorized using said license management system. Although Christiano does not specify increasing a punishment it does discuss different ways to indicate failsafe and/or overdraft status. It would be obvious to one of ordinary skill in the art to include a decrease in such ways to indicate failsafe or overdraft status depending on circumstances as one more different ways of indicating said status.

Regarding claim 24 -

Christiano discloses a computer program product embodied on a computer readable medium, said computer program product comprising program logic comprising program code means for enabling the computer to permit recognized users to execute said software application in the event of inaccessibility of said license management system (e.g. col 3 ln 67 – col 4 ln 4).

As above, Christiano does not specify exactly the same wording as in the instant claims, however, it would be obvious to one of ordinary skill in the art to adapt the teachings of Christiano in order to obtain the instant claims, thereby maximizing efficiency and accessibility in the use of mission-critical software. In other words, Christiano contemplates license inaccessibility due specifically to failure of the license management system. It would be obvious to one of ordinary skill in the art at the time the invention was made to expand license inaccessibility in such a way as to include not only actual failure of the license management system but also failures in communication

Art Unit: 3621

wherein the user cannot access the said license management system due to, e.g., failures of the internet service provider or any other reason.

(10) Response to Argument

First Issue

Appellant argues, with respect to claims 1, 16 and 24, that “there is no teaching or suggestion anywhere within Christiano of the concept of a recognized user as is recited in the present claims.”

Examiner respectfully disagrees and directs attention to Christiano wherein “licenses are typically denied to new requesters”. (col 17 ln 22). It stands to reason that if licenses are being denied to new requestors, the same licenses are being granted to old requestors, more commonly known as recognized users.

Second Issue

Appellant argues, with respect to claim 16, that the cited prior art “makes no provision to allow a client access to the license software product in the event that there is no communication between the license management system and the client.”

Examiner respectfully disagrees and directs attention to Christiano wherein “In some embodiments, a fail safe license can be checked out regardless of the type of error.” (col 17 ln 28-30). Thus, it would be obvious to one of ordinary skill in the art at the time the invention was made to expand license inaccessibility in such a way as to include not only actual failure of the license management system but also failures in communication wherein the user cannot access the said license management system due to, e.g., failures of the internet service provider or any other reason, or any other type of error.

Art Unit: 3621

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Cristina Owen Sherr

Patent Examiner, Au 3621


ANDREW J. FISCHER
SUPERVISORY PATENT EXAMINER
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Andrew J. Fischer 

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TABLE 1 – Claim 1 and Christiano (US 5,671,412)

Clause No.	Claim 1	Christiano (US 5,671,412)
1	<p>inaccessibility of a license management system</p> <p>A method for providing access to application software in the event of inaccessibility of a license management system, comprising the steps of:</p>	<p>failure occurs in the license management system.</p> <p>A fail safe indicator indicates that licenses can be provided over the amount of licenses stored in the license record to clients when a failure occurs in the license management system. (col 3 ln 67 - col 4 ln 4)</p>
2	<p>Query to the license management system</p> <p>determining whether a user has a valid software license to run a software application on a client workstation including sending a query to the license management system;</p>	<p>license request to the located license server</p> <p>sending a request to a finder located on the network to provide a license address for the license server. A license request is then sent by the client to the located license server. The request preferably includes the environmental resource capacity of the computer system that determines how many licenses are required by the computer system to use the designated product. A status message is received from the license server that provides information about whether the requested license has been granted or denied. (col 4 ln 44-46)</p>
3	<p>Permitting a recognized user</p> <p>permitting a recognized user</p>	<p>Denied to new requester (not recognized user)</p>

Clause No.	Claim 1	Christiano (US 5,671,412)
	to execute said software application on said client workstation in the event, that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query.	fail safe indicator allows licenses to be checked out when no licenses are available during failures. This can be beneficial during license management system failures, when normally no licenses would be available. For example, whenever a failure occurs in a license management system, licenses are typically denied to new requesters. (col 17 ln 20-22)